

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
MIDDLE DISTRICT OF ALABAMA, EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL ACTION NO.
	)	3:07cr150-MHT
BENJAMIN SHANE FOSTER	)	(WO)

ORDER

This cause is before the court on defendant Benjamin Shane Foster's unopposed motion to continue. For the reasons set forth below, the court finds that jury selection and trial, now set for November 5, 2007, should be continued pursuant to 18 U.S.C. § 3161(h)(8).

While the granting of a continuance is left to the sound discretion of the trial judge, United States v. Stitzer, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an

offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes from the 70-day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(8)(A). In granting such a continuance, the court may consider, among other factors, whether the failure to grant the continuance "would deny counsel for the defendant ... reasonable time necessary for effective preparation, taking into account the exercise of due diligence." § 3161(h)(8)(B)(iv).

The Act also excludes from the 70-day period a "delay resulting from any proceeding relating to the transfer of a case or the removal of any defendant from another district under the Federal Rules of Criminal Procedure."

§ 3161(h)(1)(G).

The court concludes that, in this case, the ends of justice served by granting a continuance outweigh the interest of the public and Foster in a speedy trial. Foster represents that he plans to plead guilty, but has a pending case in the Northern District of Alabama arising from the same conduct as this case. Pursuant to Fed. R. Crim. P. 20, the government is taking steps to consolidate these cases into a sole proceeding. The government will not have resolved this matter before the scheduled trial date. In addition, the government does not oppose a continuance.

Accordingly, it is ORDERED as follows:

(1) Defendant Benjamin Shane Foster's motion for continuance (doc. no. 14) is granted.

(2) The jury selection and trial, now set for November 5, 2007, are reset for December 10, 2007, at 10:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson Jr.

United States Courthouse Complex, One Church Street,  
Montgomery, Alabama.

DONE, this the 18th day of October, 2007.

/s/ Myron H. Thompson  
UNITED STATES DISTRICT JUDGE